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असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on 13th August, 2007:—

BILL No. XL OF 2007

A Bill to provide for the regulation of private detective agencies and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Private Detective Agencies (Regulation) Act, 2007.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,
extent and
commencement.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “appropriate Government” means the Central Government or a State Government;

(b) “Board” means the Central Regulatory Board or, as the case may be, a State Regulatory Board;

(c) “Central Board” means the Central Private Detective Regulatory Board constituted under section 3;

(d) “licence” means a licence granted under sub-section (5) of section 10;

(e) “notification” means a notification published in the Official Gazette;

(f) “prescribed” means prescribed by rules made under this Act;

(g) “private detective work” means collection of information in a lawful manner for such an objective by a licensed private detective agency;

(h) “private detective agency” means a person or a body of persons or a firm or a company holding a valid licence to carry out the detective work for remuneration or reward on agency basis for other persons;

(i) “private detective agent” means a person who carries out the private detective work for a private detective agency;

(j) “State Board” means the State Private Detective Regulatory Board constituted under section 5;

(k) “State Government”, in relation to a Union territory, includes the Administrator thereof appointed by the President under article 239 of the Constitution.

(2) The words and expressions used herein and not defined but defined in the Indian Penal Code shall have the meanings respectively assigned to them in that Code.

45 of 1860.

CHAPTER II

THE CENTRAL PRIVATE DETECTIVE REGULATORY BOARD

Constitution of
Central Board.

3. (1) The Central Government may, by notification, constitute the Central Private Detective Regulatory Board for the purposes of this Act to be called “the Central Board”.

(2) The Central Board shall consist of not less than five but not more than seven members including the Chairperson to be appointed for a term of three years, and on such terms and conditions including salary and allowances as may be prescribed:

Provided that the Central Government may nominate an officer not below the rank of Joint Secretary to the Government of India as the Chairperson of the Board and other members from the Departments and agencies of the Central Government:

Provided further that out of five members not more than two and in case of seven members not more than three, as the case may be, shall be from the recognised chambers of trade and commerce and the private detective agency, to be nominated by the Central Government.

(3) The Central Board may evolve its own procedures for functioning and conduct of business.

(4) The Central Government may, for efficient discharge of the functions by the Central Board, provide it with such officers and staff as may be considered necessary.

Powers and
functions of
Central Board.

4. (1) The functions of the Central Board shall be to:—

(a) grant, renew, suspend or revoke an all India licence to a private detective agency under the provisions of this Act,

- 100 -

(b) lay down the standards of training for the profession for private detective agents throughout the country,

(c) prescribe code-of-ethics for conduct of private detective agency and the private detective agents operating in the country,

(d) advise the Central Government on any matter of policy concerning private detective agencies,

(e) perform the functions of State Board in terms of proviso to sub-section (1) of section 5 at the request of the concerned State,

(f) lay down the code of conduct for private detective agencies and its agents, particularly with regard to protection of rights of individuals to privacy, freedom, etc.,

(g) any other matter for carrying out the provisions of this Act.

(2) The Central Board may issue directions to a private detective agency, to whom it has issued a licence, for ensuring compliance with the provisions of this Act and the rules made thereunder.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, *suo motu* or on receipt of a report from a State Government or any other information, order the revocation or suspension of a licence issued by the Central Board if it is satisfied that the activities of a private detective agency are prejudicial to the national security or public interest and a copy of such order shall be sent forthwith to the Central Board:

Provided that every such order of revocation or suspension of a licence shall conform to the provisions of sub-sections (3) and (4) of section 16.

CHAPTER III

THE STATE PRIVATE DETECTIVE REGULATORY BOARD

5. (1) The State Government may, by notification, constitute the..... (name of the State) State Private Detective Regulatory Board for the purposes of this Act to be called "the State Board": Constitution of State Board.

Provided that nothing in this section shall prevent a State Government from entrusting the functions of State Board to a State Board of adjacent State with the prior consent of that State, or to the Central Board with the prior consent of the Central Government.

(2) The State Board shall consist of not less than three but not more than five members including Chairperson to be appointed for a term of three years, and on such terms and conditions including salary and allowances as may be prescribed:

Provided that the State Government may nominate an officer not below the rank of Joint Secretary to that Government as the Chairperson of the State Board and other members from the Departments and agencies of the State Government:

Provided further that out of three members not more than one and in case of five members not more than two, as the case may be, shall be from the recognised chambers of trade and commerce and the private detective agency, to be nominated by the State Government.

(3) The State Board may evolve its own procedures for functioning and conduct of business.

(4) The State Government may, for efficient discharge of the functions, by the Board, provide it with such officers and staff as may be considered necessary.

6. (1) The functions of the State Board shall be to:—

(a) grant, renew, suspend or revoke a licence to a private detective agency under the provisions of this Act,

Powers and functions of State Board.

(b) advise the State Government on any matter of policy concerning private detective agencies,

(c) perform the functions of State Board for another State in terms of proviso to sub-section (1) of section 5 at the request of that State,

(d) any other matter for carrying out the provisions of this Act.

(2) The State Board may issue directions to a private detective agency functioning in that State for ensuring compliance with the provisions of this Act and the rules made thereunder.

(3) Notwithstanding anything contained in sub-section (1), the State Government may, *suo motu* or on receipt of any information, order the revocation or suspension of a licence issued by its State Board if it is satisfied that the activities of a private detective agency are prejudicial to the national security or public interest and a copy of such order shall be sent forthwith to the State Board:

Provided that every such order of revocation or suspension of a licence shall conform to the provisions of sub-sections (3) and (4) of section 16.

CHAPTER IV

REQUIREMENT OF LICENCE TO CARRY OR COMMENCE THE BUSINESS OF PRIVATE DETECTIVE WORK

7. No person shall carry on or commence the business of private detective agency, unless he holds a licence issued under this Act:

Provided that the person carrying on the business of private detective agency, immediately before the commencement of this Act, may continue to do so for a period of one hundred and eighty days from the date of such commencement and if he has made an application for such licence within the said period of one hundred and eighty days, till the disposal of such application.

8. An application for issue of a licence under this Act shall only be considered from a person or persons after due verification of his antecedents.

9. (1) A person shall not be considered for issue or renewal of a licence under this Act, if he has been—

(a) convicted by a competent court for an offence, the prescribed punishment for which is imprisonment of not less than two years; or

(b) keeping links with any organisation or association which is banned under any law on account of their activities which pose threat to national security or public order or there is information about such a person indulging in activities which are prejudicial to national security or public order; or

(c) dismissed or removed from Government service; or

(d) found violating the provisions of sections of 20 and 25.

(2) A company, firm or an association of persons shall not be considered for issue of a licence under this Act, if, it is not registered in India, or having a proprietor or a majority shareholder, partner or director, who is not a citizen of India.

10. (1) An application for grant of licence to a private detective agency shall be made to a State Board for a licence for operating in that State or to the Central Board in case of licence for operating in two or more States, in such form as may be prescribed.

(2) The applicant shall submit an affidavit incorporating the details in relation to the provisions contained in section 9, ensure the availability of the training for its private detective

Persons or private detective agency not to carry on or commence the business of private detective agency without licence.

Eligibility for licence.

Persons not eligible for licence.

Application for grant of licence.

agents required under sub-section (2) of section 12, fulfilment of conditions under section 14 and details of any criminal case, registered with police or pending in a court of law, involving the applicant.

(3) Every application under sub-section (1) shall be accompanied by a fee of—

(a) rupees fifty thousand if the private detective agency is to operate in one State;

(b) rupees three lakhs if the private detective agency is to operate in two or more States.

(4) On receipt of an application under sub-section (1), the Board may, after making such inquiries or consultations as it considers necessary and obtaining no objection certificate from the concerned police authority, by order in writing, either grant a licence or refuse to grant the same within a period of ninety days from the date of receipt of the application with complete particulars and the prescribed fee:

Provided that no order of refusal shall be made unless—

(a) the applicant has been given a reasonable opportunity of being heard; and

(b) the grounds on which licence is refused is mentioned in the order.

(5) A licence granted under this section—

(a) shall be valid for a period of five years unless the same is cancelled under sub-section (1) of section 16;

(b) may be renewed from time to time after the expiry of five years, for a further period of five years on payment of such fee as may be prescribed; and

(c) shall be subject to such conditions as may be prescribed by the Central Government.

11. (1) An application for renewal of licence shall be made to the Board, not less than one hundred and twenty days before the date of expiry of the period of validity thereof, in such form as may be prescribed by the Central Government and shall be accompanied by the prescribed fee and other documents required under sections 8, 10 and 14.

Renewal of licence.

(2) The Board shall pass an order on application for renewal of licence within a period of ninety days from the date of receipt of the application complete in all respects along with renewal fee.

(3) On receipt of an application under sub-section (1), the Board shall, after obtaining no objection certificate from the police and making such inquiries or consultations as it considers necessary, may by order in writing, renew the licence or refuse to renew the same:

Provided that no order of refusal shall be made except after giving the applicant a reasonable opportunity of being heard.

(4) All orders of refusal to renew the licence shall set forth the grounds for such refusal.

12. (1) Every private detective agency shall, within one hundred and eighty days of obtaining the licence, commence its activities.

Conditions for commencement of operation and engagement of agents.

(2) Every private detective agency shall ensure imparting of such training and skills to its private detective agents as may be prescribed by the Central Government:

Provided that the person carrying on the business of private detective agency before the commencement of this Act, shall ensure the required training to its detective agents within a period of one year from the date of such commencement.

(3) A private detective agency shall not employ or engage a person unless he fulfils the conditions specified in sub-section (1) of section 13.

Eligibility to
be a private
detective agent

13. (1) A private detective agency shall not employ or engage any person as a private detective agent unless he—

- (a) is a citizen of India;
- (b) has completed twenty-one years of age;
- (c) satisfies the agency about his character and antecedents in such manner as may be prescribed;
- (d) has completed the prescribed detective training successfully;
- (e) fulfils such physical standards as may be prescribed; and
- (f) satisfies such other conditions as may be prescribed.

(2) No person who has been convicted by a competent court for an offence and sentenced to imprisonment for a period of two years or more, shall be employed or engaged as a private detective agent.

Conditions of
licence.

14. (1) The appropriate Government may, in consultation with the Board make rules to prescribe the conditions on which licence shall be granted under this Act and such conditions shall include requirements as to the training which the licensee is to undergo, details of the person or persons forming the agency and obligation as to the information to be provided from time to time to the Board:

Provided that a person opening another private detective agency, when the licence issued in respect of his own agency is suspended or cancelled, shall not be eligible for a licence with respect to the other agency.

(2) The appropriate Government may make provision in the rules to verify about imparting of required training to the private detective agent under sub-section (2) of section 12 and to review continuation or otherwise of licence of such private detective agency which may not have adhered to the condition of ensuring the required training.

Exhibition of
Licence and
voluntary
disclosure.

15. (1) Every private detective agency shall exhibit its licence or a copy thereof in a conspicuous place of its business.

(2) Every private detective agency shall disclose to the Board information regarding the agency, its objects, activities and in respect of its promoters, directors or proprietors, as the case may be.

Cancellation
and suspension
of licence.

16. (1) The Board may cancel or suspend any licence on any one or more of the following grounds, namely:—

- (a) that the licence has been obtained on misrepresentation or suppression of material facts;
- (b) that the licence holder has used false documents or photographs;
- (c) that the licence holder has violated the provisions of this Act or the rules made thereunder or any of the conditions of the licence;
- (d) that the licence holder has misused information obtained by him during the discharge of his duties as the private detective agency by unauthorisedly passing on the said information to any industrial or business undertaking or a company or any other person;
- (e) that the licence holder by using any letter-head, advertisement or any other printed matter or in any other manner represented that the private detective agency is an instrumentality of the Government or such agency is or has been using a name different from that for which licence has been granted;
- (f) that the licence holder is or has been impersonating or permitting or aiding or abetting any body to impersonate as a public servant;

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(g) that the private detective agency had failed to commence its activities within the specified time period;

(h) that the licence holder is or has wilfully failed or refused to render the services agreed to any person;

(i) that the licence holder has done any act which is in violation of a court order or an order of a lawful authority or is or has been advising, encouraging or assisting any person to violate any such order;

(j) that there have been repeated instances when the private detective agent or agents provided by the private detective agency—

(a) committed a breach of trust or misappropriated the property or a part thereof which they were concerned with;

(b) were found to be involved in committing crimes;

(c) had conspired in or abetted a crime against the person or property concerned with;

(k) that the licence holder has done any act which poses a threat to national security, or did not provide assistance to the police or other authority in the discharge of its duties or acted in a manner prejudicial to national security or public order or law and order;

(l) that the licence holder or its agent has violated any of the provisions of section 25, 26 or 28.

(2) Where the Board, for reasons to be recorded in writing, is satisfied that pending the question of cancelling of licence on any of the grounds mentioned in sub-section (1), it is necessary to do so, the Board may, by order in writing, suspend the operation of the licence for such period not exceeding thirty days as may be specified in the order and require the licence holder to show cause, within fifteen days from the date of issue of such order, as to why the suspension of the licence should not be extended till the determination of the question of cancellation.

(3) Every order of suspending or cancelling of a licence shall be in writing and shall specify the reasons for such suspension or cancellation and a copy thereof shall be communicated to the person affected.

(4) No order of cancellation of licence under sub-section (1) shall be made unless the person concerned has been given a reasonable opportunity of being heard.

17. (1) Any person aggrieved by an order of the Board refusing the licence under sub-section (4) of section 10 or renewal under sub-section (3) of section 11 or order of suspension of licence under sub-section (2) of section 16 or cancellation of licence under sub-section (1) of that section, may prefer an appeal against that order to the Central Government in case of orders passed by Central Board, or to the State Government in case of orders passed by State Board, within a period of sixty days of the date of such order: Appeals.

Provided that an appeal may be admitted after the expiry of the said period of sixty days if the appellant satisfies the appropriate Government that he has sufficient cause for not preferring the appeal within that period.

(2) Every appeal under sub-section (1) shall be made in such form as may be prescribed and shall be accompanied by a copy of the order appealed against.

(3) Before disposing of an appeal, the appropriate Government shall give the appellant a reasonable opportunity of being heard.

18. (1) Every private detective agency shall maintain a register containing—

(a) the names and addresses of the persons managing the private detective agency;

Register to be maintained by a private detective agency.

(b) the names, addresses, photographs and salaries of the private detective agents engaged by it;

(c) the names and addresses of the persons whom it had provided private detective agents and gist of the services provided; and

(d) such other particulars as may be prescribed.

(2) The Board may call for such information as it considers necessary from any private detective agency or private detective agent to ensure due compliance of the Act.

Inspection of
licence.

19. The Board or any other officer authorised by it in this behalf, not below the rank of Inspector of Police, may at any reasonable time, enter the premises of the private detective agency and inspect and examine the place of business, equipments used in providing detective services, the records, accounts and other documents connected with the licence and may take copy of any document thereof.

Issue of photo
identity card.

20. (1) Every private detective agent shall be issued a photo identity card, by the private detective agency employing or engaging the agent.

(2) The photo identity card under sub-section (1) shall be issued in such form as may be prescribed.

(3) Every private detective agent—

(a) shall carry his identity card issued by the agency, while performing private detective work and shall produce it on demand for inspection by the Board or any other officer authorized by it in this behalf or by the police on duty; and

(b) shall not wear any garb or carry any token or emblem resembling that which is used by the police forces or armed forces of the Union.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

Grants by
Central
Government
and constitu-
tion of Fund.

21. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Central Board by way of grants such sums of money as that Government may consider necessary for being utilized for the purposes of this Act.

(2) There shall be constituted a Fund to be called the Central Board Fund and there shall be credited thereto—

(i) any grants made to the Central Board by the Central Government; and

(ii) all fees and charges received by the Central Board under this Act.

(3) the Fund referred to in sub-section (2) shall be applied for meeting salary, allowances and other remuneration of the members, officers and other employees of the Central Board and the expenses of the Central Board incurred in the discharge of its functions under this Act.

Grants by State
Governments
and constitu-
tion of Fund.

22. (1) The State Government may, after due appropriation made by Legislature by law in this behalf, make to the State Board by way of grants such sums of money as that Government may consider necessary for being utilized for the purposes of this Act.

(2) There shall be constituted a Fund to be called the State Board Fund and there shall be credited thereto—

(i) any grants made to the State Board by the State Government; and

(ii) all fees and charges received by the State Board under this Act.

(3) The Fund referred to in sub-section (2) shall be applied for meeting salary, allowances and other remuneration of the members, officers and other employees of the State Board and the expenses of the State Board incurred in the discharge of its functions under this Act.

23. (1) The Central Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and
Audit of
Central Board.

(2) The accounts of the Board shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Central Board to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Central Board under this Act shall, have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Central Board.

(4) The accounts of the Central Board as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Central Board and the Central Government shall cause the audit report to be laid as soon as may be after it is received before each House of Parliament.

24. (1) The State Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

Accounts and
Audit of State
Board.

(2) The accounts of the State Board shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Board to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the State Board under this Act shall, have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office of the State Board.

(4) The accounts of the State Board as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government by the State Board and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

CHAPTER VI

OFFENCES AND PENALTIES

25. (1) The private detective agency shall furnish such information, which is relevant to the issue under enquiry and which relates to the lawful objective for which the enquiry was undertaken, only to the client or to his authorized representative.

Disclosure of
information to
other persons.

(2) The private detective agency shall not divulge any other information which the agency might have received in the course of the enquiry referred to in sub-section (1) to any other person or agency.

26. (1) If commission of any cognizable offence is noticed by any private detective agent during the course of discharge of his duties, he shall bring it to the notice of his superior immediately who in turn shall forthwith inform the police either through his employer or agency or on his own.

Matters
relating to a
cognizable
offence.

(2) No person engaged by a private detective agency, including private detective agent shall tamper with evidence at any scene of crime or carry out any search at any place relating to a cognizable offence, which in any manner hampers or obstructs investigation by the police.

Punishment for contravention of certain provisions.

27. (1) Any person who contravenes the provisions of section 7 shall, in the first instance, be liable to penalty by the Board, which may extend to two lakh rupees; and, on persistent violation of the said section, he shall be punishable by the competent court, with imprisonment for a term which may extend to two years and also with fine which may extend to five lakh rupees.

(2) Any person or private detective agency who contravenes, the provisions of section 12, 13 or 15, shall be liable to punishment with a fine which may extend to fifty thousand rupees, in addition to suspension or cancellation of the licence.

(3) Any person or private detective agency who obtains or attempts to obtain any information contravening the provisions of this Act, or uses the information collected during the course of private detective work for black-mailing any person or contravenes the provision of section 26, shall be liable for punishment under the Indian Penal Code or any other law for the time being in force, in addition to suspension or cancellation of the licence.

45 of 1860.

Prohibition for violating the privacy or causing annoyance.

28. A private detective agent shall not violate the rights of an individual to privacy and freedom and for any such violation, the agent shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifty thousand rupees, in addition to the suspension or cancellation of the licence of the concerned private detective agency.

Offences by companies.

29. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “Director”, in relation to a firm, means a partner in the firm.

CHAPTER VII

MISCELLANEOUS

Indemnity.

30. No suit, prosecution or other legal proceeding shall lie against the Central Board or the State Board or any other officer authorised by it in respect of anything in good faith done or intended to be done under this Act.

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31. (1) The Central Government may, by notification, in the Official Gazette, make rules for carrying out the provisions of this Act.

Power of
Central
Government
to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the constitution of the Central Board and terms and conditions of its members;
- (b) the form for grant of licence and the fee and term for renewal of licence for operating in two or more States;
- (c) the provisions regarding training and skills to detective agents under sub-section (2) of section 12.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

32. (1) The State Government may, by notification, in the official Gazette, make rules for carrying out the provisions of this Act.

Power of State
Government to
make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the procedure for verification of character and antecedents under clause (c); the type of training under clause (d); the physical standards under clause (e); and other conditions under clause (f) of sub-section (1) of section 12;

(b) the form of an application for grant of licence under sub-section (1); and the form in which the licence is to be granted under sub-section (4) of section 9; and conditions subject to which such licence is to be granted under section 13;

(c) the form of an application and fee for renewal of licence under sub-section (1) of section 10;

(d) the form under sub-section (2) of section 17 for preferring an appeal;

(e) the particulars to be maintained in a register under sub-section (1) of section 18;

(f) the form in which photo identity card under sub-section (2) of section 20 be issued;

(g) the constitution of the State Board and the terms and conditions of its members;

(h) any other matter which is required to be, or may be, prescribed:

Provided that the Central Government may frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they conform to such model rules.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State legislature where it consists of two Houses, or where such legislature consists of one House, before that House.

(4) In respect of Union territories, every rule made to carry out the provisions of the Act shall be laid before each House of Parliament and where there exists a Legislative Assembly, before that Assembly.

Act not in
derogation of
any other law.

33. (1) Nothing in this Act shall discharge a private detective agency or private detective agent from any civil or criminal liability or any act or omission under any other law for the time being in force.

(2) The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Powers of
Central
Government
to give
directions.

34. The Central Government may, in exercise of its powers and performance of its functions under this Act, issue directions in writing to the Central Board or the State Board and such Central Board or State Board, as the case may be, shall be bound to comply with such directions.

Power to relax
in certain cases.

35. The Central Government may relax the requirement of qualifications for employing or engaging any person as private detective agent or the requirement of licensing for performing private detective work in certain cases, for the reasons to be recorded in writing, in respect of a private detective agent or a private detective agency, if such agent or agency is recognised or registered under the law of any country.

Power to
remove
difficulty.

36. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

Economic growth and development in the wake of globalization and liberalization of the Indian economy has led to establishment of a large number of private business enterprises. At the same time, the security scenario of the country has been affected by international terrorism and extremism, keeping the police and security agencies occupied primarily in facing these emerging challenges. There has been increasing reliance on private investigation of vigilance by the business establishments for their information or intelligence gathering purposes as most of them tend to hire detective agents from private sources. Therefore, a large number of private detective agencies have come up all over the country. While, in most of the cases, private detective agencies have helped in meeting the private investigation and vigilance needs of business establishments, there has been a growing concern about the manner of functioning of these agencies, as some of these conduct the operations without due verification of antecedents of the personnel employed as private detective agents; or due regard to the protection of rights of individuals spied upon by these private detectives has not been observed.

2. It has been felt that there is a need to evolve or enforce proper norms for functioning of these private detective agencies and to ensure that detective agencies of dubious reputation close down their business and do not proliferate. Therefore, the Central Government have been considering to regulate the functioning of these private detective agencies so that they are run within legal parameters and are accountable to a regulatory authority.

3. In view of above, it is proposed to regulate the private detective agencies through legislation which provides for constitution of a Central Board at the Central level and State Boards at the State level for the purpose of grant of licenses and also to make holding of licences mandatory for carrying on the business of private detective agencies and other related matters.

4. The Bill seeks to achieve the above objects.

SHIVRAJ V. PATIL

NOTES ON CLAUSES

Clause 2 defines the various expressions used in the Bill.

Clause 3 provides for establishment of a Central Private Detective Regulatory Board for the purposes of the Bill to be called 'the Central Board' which may consist of five to seven members including Chairperson to be appointed for a term of three years on such terms and conditions as may be prescribed. It provides that the Central Government may nominate an officer not below the rank of Joint Secretary to the Government of India as its Chairperson. It also provides that out of five members not more than two and in case of seven members not more than three members shall be nominated by the Central Government from the recognised Chambers of trade and commerce and private detective agency. It empowers the Board to evolve its own procedure for functioning and conduct of business; and for its efficient discharge of the functions, the Central Government may provide such officers and as staff as it considers necessary.

Clause 4 provides for the powers and functionings of the Central Board which, '*inter alia*', include the power to grant, renew, suspend or revoke all India licence of a private detective agency, lay down the standards of training, the code of conduct etc., advice the Central Government on any matter of policy and perform the functions of State Boards in terms of proviso to sub-clause (1) of clause 5 at the request of the concern State.

Clause 5 provides for establishment of the (name of the State) State Private Detective Regulatory Board for the purposes of the Bill to be called 'the State Board' which may consist of three to five members including Chairperson to be appointed for a term of three years on such terms and conditions as may be prescribed. It provides that the State Government may nominate an officer not below the rank of Joint Secretary to that Government as its Chairperson. It also provide that out of three members not more than one and in case of five members not more than two members shall be nominated to the State Government from the recognised Chambers of trade and commerce and private detective agency. It empowers the Board to evolve its own procedure for functioning and conduct of business; and for its efficient discharge of the functions, the State Government may provide such officers and as staff as it considers necessary.

Clause 6 provides for powers and functions of the State Board which, '*inter alia*', include the power to grant, renew, suspend or revoke the licence of a private detective agency, advice the State Government on any matter of policy and perform the functions of the State Board for another State in terms of proviso to sub-clause (1) of clause (5) at the request of that State.

Clause 7 provides for requirement of licence to carry on or commence the business of private detective agency.

Clause 8 provides that an application for issue of licence shall only be considered from a person or persons after due verification of his antecedents.

Clause 9 enumerates various reasons when a person becomes ineligible for issue or renewal of a licence under the Bill.

Clause 10 provides the manner of making an application to the Central Board or the State Board, as the case may be, for grant of licence and makes provisions for licence fees, period of validity, etc., of licence.

Clause 11 provides for conditions and procedure for renewal of a licence. This clause also provide that the Board shall pass an order on such application within a period of ninety days and no refusal shall be made without giving the applicant a reasonable opportunity of being heard.

Clause 12 specifies the conditions for commencement of operation and engagement of private detective agents. This clause also provides that a private detective agency shall ensure imparting of such training and skills to its private detective agents as may be prescribed by the Central Government.

Clause 13 enumerates detailed provisions regarding eligibility criteria to be fulfilled for employment or engagement of any person as a private detective agent by a private detective agency.

Clause 14 provides for framing of rules by the appropriate Government, in consultation with the Board, to prescribe conditions on which licence shall be granted under the Bill including requirements as to training, which the licence is to undergo, details of persons forming the agency and obligation to furnish the information to the Board from time to time.

Clause 15 provides that the private detective agency shall exhibit its licence or a copy thereof in a conspicuous place at its business and shall also disclose the information regarding the agency, its objects, activities and in respect of its promoters, directors, proprietors to the concerned Board.

Clause 16 lays down detailed grounds for cancellation or suspension of licence.

Clause 17 provides for preferring of appeals by aggrieved persons to the Central Government or the State Government and also specifies the period within which an appeal may be preferred.

Clause 18 provides for maintenance of register by the private detective agency giving full details of the persons managing the agency, particulars of detective agents engaged by it, gist of services provided etc.

Clause 19 provides for inspection and examination of place of business, records, accounts, etc., of a private detective agency by the concerned Board.

Clause 20 provides for issue of a photo identify card to every private detective agent employed or engaged by an agency so as to prove their identity and authority.

Clause 21 empowers the Central Government, after due appropriation made by Parliament by law in this behalf, to provide for grants to the Central Board. It also provides for constitution of a Central Board Fund for receiving grants made by Central Government, credit all fees and charges received by the Central Board and also to meet salary, allowances and other remuneration of its members, officers and other employees of the Central Board and other expenses incurred by the Central Board.

Clause 22 empowers the State Government after due appropriation made by Legislature by law in this behalf, to provide for grants to the State Board. It also provides for constitution of a State Board Fund for receiving grants made by State Government, credit all fees and charges received by the State Board and also to meet salary, allowances and other remuneration of its members, officers and other employees of the State Board and other expenses incurred by the State Board.

Clause 23 provides for maintenance of proper accounts by the Central Board and periodical audit of the same by the Comptroller and Auditor General of India. It also provides that the Central Government shall cause the audit report to be laid as soon as may be, after it is received, before each House of Parliament.

Clause 24 provides for maintenance of proper accounts by the State Board and periodical audit of the same by the Comptroller and Auditor General of India. It also provides that the State Government shall cause the audit report to be laid as soon as may be, after it is received, before the State legislature.

Clause 25 provides that the private detective agency shall provide such information, which is relevant to the issue under enquiry and which relates to the lawful object for which enquiry is undertaken only to the client or his authorised representative and it also provides

that the private detective agency shall not divulge any other information which it might have received in course of enquiry.

Clause 26 specifies the course of action to be taken by a private detective agent if he notices commission of any cognizable offence during the course of discharge of his duties.

Clause 27 provides that any person who contravenes the provision of clause 7 of the Bill shall be liable to a penalty by the Board, up to two lakh rupees; and on persistent violation of the said clause he shall be punishable by a competent court with imprisonment for a term up to two years and with fine up to five lakh rupees. It also provides that any person or private detective agency who contravenes the provisions of clause 12, 13 and 15 shall be liable to punishment up to fifty thousand rupees in addition to suspension or cancellation of licence. It also provides that any person of private detective agency who obtains or attempts to obtain any information contravening the provisions of the Bill or uses the information collected during the course of private detective work for black-mailing any person or contravenes the provision of clause 26, shall be liable for punishment under the Indian Penal Code or any other law for the time being in force, in addition to suspension or cancellation of licence.

Clause 28 is aimed to safeguard the rights of an individual to privacy and freedom and for the contravention of this provision provides for punishment with imprisonment up to six months and also with fine up to fifty thousand rupees, in addition to suspension or cancellation of licence.

Clause 29 provides for punishment for commission of offences by companies under the Bill. It also defines the expression 'a company', 'director', etc., for the purpose of this clause.

Clause 30 provides for immunity from any suit, prosecution or other legal proceeding against the Central Board or the State Board or any officer authorised by it in respect of anything in good faith done or intended to be done under this Bill.

Clause 31 empowers the Central Government to make rules for carrying out the provisions of the Bill. It enumerates the matters in respect of which the Central Government shall make rules. This clause also provides for laying of rules made by the Central Government before each House of Parliament.

Clause 32 empowers the State Government to make rules for carrying out the provisions of the Bill. The matters in respect of which the State Government shall make rules are enumerated in this clause. This clause also provides for laying of the rules made by the State Government before the State legislature and in respect of rules made by the Union territories before each House of Parliament or where there exists a Legislative Assembly before that Assembly.

Clause 33 provides that nothing in this Bill shall discharge a private detective agency or private detective agent from any civil or criminal liability or any act or omission under any other law for the time being in force. It also provides that provisions of the Bill are in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Clause 34 empowers the Central Government to issue directions to the Central Board or to the State Board, which shall be binding for compliance on the concerned Board.

Clause 35 enables the Central Government for relaxation of certain provisions of the Bill in respect of a private detective agent or a private detective agency, if such an agent or agency is recognised or registered under the law of any other country.

Clause 36 vests the Central Government with the power to remove any difficulty which may arise in giving effect to the provisions of the Bill, by making such provisions, as may be necessary for removing the difficulty. The clause also provides that no such order shall be made after the expiry of a period of two years from the date of commencement of the Bill and that every such order shall be laid before each House of Parliament.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 3 of Bill proposes to constitute the Central Private Detective Regulatory Board. Sub-clause (2) of clause 3, *inter alia*, provides that the Central Board shall consist of not less than five but not more than seven members including the Chairperson to be appointed for a term of three years, on such terms and conditions including the salaries and allowances as may be prescribed. Clause 21 provides that the Central Government may, after due appropriation made by Parliament, by law in this behalf, make to the Central Board by way of grants such sums of money as that Government may consider necessary for being utilized for the purposes of the Bill and constitution of Central Board Fund.

2. Sub-clause (1) of clause 5 proposes to constitute the State Private Detective Regulatory Board for the purposes of the Bill. Sub-clause (2) of clause 5, *inter alia*, provides that the State Board shall consist of not less than three but not more than five members including the Chairperson to be appointed for a term of three years, on such terms and conditions including the salary and allowances as may be prescribed. Clause 22 makes provision for grants by State Governments to the State Board and constitution of State Board Fund.

3. For the efficient functioning of the Board, it will also require adequate supporting staff. It is not possible to indicate precisely at this stage the exact number and the categories of staff required for the Central Board. This will require to be worked out separately at an appropriate stage before the Board is actually set up. In addition to the expenditure on the supporting staff, expenditure will also have to be incurred for accommodation, acquisition of furniture and fittings and other office equipments. On a rough estimate, the recurring expenditure on running the Central Board is expected to be of the order of about Rs. 81.8 lakh per annum. The capital expenditure that will have to be incurred is expected to be of the order of about Rs. 7.2 lakh.

4. The Bill, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India. The Board would help the Government in monitoring and regulating the activities of private detective agencies so that they are run within legal parameters and are made accountable to a regulatory authority.

5. The Bill does not involve any other expenditure recurring or non-recurring in nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 31 of the Bill empowers the Central Government to make rules to carryout the provisions of the Bill. Such rules may, *inter alia*, provide for the (i) the constitution of the Central Board and terms and conditions of its members; (ii) the form for grant of licence and the fee and term for renewal of licence for operating in two or more States; (iii) the provisions regarding training and skills to detective agents under sub-section (2) of section 12;

2. Clause 32 of the Bill empowers the State Governments to make rules for the purpose of carrying out the provisions of the Bill. Such rules may, *inter alia*, provide for (i) the procedure for verification of character and antecedents under clause (c); the type of training under clause (d); the physical standards under clause (e); and other conditions under clause (f) of sub-section (1) of section 12; (ii) the form of an application for grant of licence under sub-section (1) and the form in which the licence is to be granted under sub-section (4) of section 9; and conditions subject to which such licence is to be granted under section 13; (iii) the form of an application and fee for renewal of licence under sub-section (1) of section 10; (iv) the form under sub-section (2) of section 17 for preferring an appeal; (v) particulars to be maintained in a register under sub-section (1) of section 18; (vi) the form in which photo identity card under sub-section (2) of section 20 be issued; (vii) the Constitution of the State Board and the terms and conditions of its members; (viii) any other matter which is required to be or may be, prescribed;

The Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section and where any such model rules have been framed in respect of any such matter, they shall apply to the State until rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they conform to such model rules.

3. The matters in respect of which rules may be made under the aforesaid provisions are matter of procedure and administrative detail and it is not practicable to provide for them in the Bill. The rules made under the Bill are also required to be laid before Parliament or State Legislature, as the case may be. The delegation of legislative power is, therefore, of a normal character.

YOGENDRA NARAIN
Secretary-General.